



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 21, 1996

Mr. Miles K. Risley  
Senior Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR96-1508

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID Nos. 100782 and 100786.

The City of Victoria (the "city") received two requests for the application, insurance forms and paperwork of Allan's Wrecker service. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and

(2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the city is currently involved in pending litigation. You have submitted the petition in that cause, *Allan's Wrecker Service v. City of Victoria*, No. 96-5-49, 239-C (Dist. Ct., Victoria County, Tex.). After reviewing the submitted materials, we find that litigation is pending and that the requested documents relate to the litigation. The city may, therefore, withhold the requested information under section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID Nos. 100782, 100786

Enclosures: Submitted documents

cc: Mr. Charles Beaver  
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(w/o enclosures)

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